

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of

Implementation of Section 621(a)(1) of the Cable
Communications Policy Act of 1984 as amended
by the Cable Television Consumer Protection and
Competition Act of 1992

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MB Docket No. 05-311

COMMENTS SUBMITTED BY CERTAIN FLORIDA MUNICIPALITIES

Comments Submitted by:

Bal Harbour Village, Florida,
Town of Surfside, Florida,
City of Homestead, Florida,
City of Dania Beach, Florida,
City of Miramar, Florida,
Town of Pembroke Park, Florida, and
City of Weston, Florida

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I. Introduction.

These Comments are filed on behalf of the following Florida municipalities: Bal Harbour Village, Town of Surfside, City of Homestead, City of Dania Beach, City of Miramar, Town of Pembroke Park and the City of Weston (hereinafter referred to collectively as “Florida Cities”) in response to the Federal Communications Commission’s (“Commission”) March 5, 2007, Further Notice of Proposal Rulemaking (“FNPRM”). The Florida Cities disagree with the Commission’s rulings in the FNPRM on the grounds that the rulings should not apply to incumbent cable operators, and that the rulings violate the Cable Act’s goals of ensuring that a cable system is “responsive to the needs and interest of the local community.”²

This proceeding is based on Section 621(a)(1) of the Cable Act, 47 U.S.C. §541(a)(1), and the rulings adopted in the FNPRM are specifically, and entirely, directed at “facilitat[ing] and expedit[ing] entry of new cable competitors into the market for the delivery of video programming, and accelerat[ing] broadband deployment.”³ By its terms, the “unreasonable refusal” provisions of Section 621(a)(1) of the Cable Act, 47 U.S.C. §541(a)(1), apply to “additional competitive franchise[s],” not to incumbent cable operators. Those operators are by definition already in the market, and their future franchise terms and conditions are governed by the franchise renewal provisions of Section 626 of the Cable Act, 47 U.S.C. §546, not Section 621(a)(1) of the Cable Act.

¹ *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television and Consumer Protection Act of 1992*, MB Docket No. 05-311, FCC 06-180, Further Notice of Proposal Rulemaking (released March 5, 2007, and published in the Federal Register March 21, 2007; hereinafter cited as “FNPRM”).

² Section 601(2) of the Cable Act, 47 U.S.C. §521(2); Cable Communications Policy Act of 1984, 47 U.S.C. §§601 *et. al.* (hereinafter cited as “Cable Act”).

³ FNPRM at ¶ 1.

The Florida Cities strongly endorse the Commission's tentative conclusion that the Commission cannot preempt state or local customer service laws that exceed the Commission's standards or prevent local franchising authorities and cable operators from agreeing to more stringent standards.⁴ The Florida Cities' consumer protection standards are essential for quality customer service, disaster preparation, emergency services, and restoration efforts.

As a preliminary matter, the Florida Cities agree with and therefore adopt the comments filed by the National Association of Telecommunications Officers and Advisors, the National League of Cities, the National Association of Counties, the U.S. Conference of Mayors, the Alliance for Community Media, and the Alliance for Communications Democracy, filed in response to the FNPRM.

11. Conditions That May Be Imposed Upon Cable Franchise Renewals Are Governed by Section 626 of Cable Act.

The Cable Act explicitly authorizes franchising authorities, when awarding a franchise, to "require adequate assurance that the cable operator will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support."⁵ However, renewal of cable franchises involves reviewing the performance of the incumbent cable operator under the existing cable franchise and ascertaining future cable-related community needs and interests.⁶ While there are no required methods for performance evaluation and determining future cable-related needs and interests, several of the Florida Cities have interviewed staff and representatives of the community to determine the adequacy of equipment, services, facilities, and support provided by the incumbent cable operator, and researched services being provided by the incumbent and other providers to other communities and examining whether such services satisfy their communities' future cable-related needs and interests.

Most of the Florida Cities, through the aforementioned ascertainment process, negotiated cable franchise agreements with incumbent cable operators that contained "most favored nations" clause terms to ensure that the services offered in their communities remain comparable with services offered elsewhere. To the extent the Commission determines that the NFPRM applies to a renewal, local governments will be unable to exercise "most favored nations" clauses contained in an existing cable franchise or local regulatory ordinance to obtain advanced services provided to other areas. A local government would no longer be able to require upgraded cable systems and other benefits and in-kind services to satisfy the cable related needs of their communities. Some of the benefits obtained by the Florida Cities include: free cable and often broadband services for government facilities, schools, libraries and community centers, which is often the only way many parents, teachers, students and residents have access to such services; an Institutional Network ("I-NET"), which is a fiber network that enables the local government to obtain capabilities for voice and data communications between various government and school facilities; access channels for government and educational programming to disseminate information to better serve and interact with their constituents. In addition to actual channel capacity for access channels, many of the Florida Cities receive financial grants and/or

⁴ *Id.* at ¶ 142.

⁵ Cable Act at §621(a)(4)(B).

⁶ Cable Act at §626.

equipment to produce programming for their access channels. These benefits and in-kind services set a reasonable standard for obligations a local government should be permitted to impose upon a cable franchise renewal.

Local governments have experienced frustration when the issue of timing arises regarding franchise negotiations. While it is easy for the Commission to claim that local governments are the cause for delay or obstructed attempts to deploy competitive video service', cable operators have simply not responded to several Florida Cities' attempts to pursue negotiations in a timely and efficient manner.⁸ Further, local governments have not made unreasonable demands on incumbent cable operators in franchise renewals. As mentioned above, the Cable Act explicitly authorizes franchising authorities to require "adequate" assurances that the cable operator will provide adequate capacity, facilities, or financial support.' While the Commission concluded that "adequate" should be given its plain meaning, which it interpreted as not "significant" but rather "satisfactory or sufficient,"¹⁰ the Florida Cities contend that the minimum standard for "adequate" services has risen since enactment of the Cable Act. The Florida Cities may be willing to support timeframes for renewals for incumbent cable operators who acknowledge a local government's ascertainment of its future cable related needs. However, the Commission should not reward incumbent cable operators that have stalled cable franchise negotiations and apply its 90-day time frame for applicants with access to public rights-of-way to reach a final decision on a competitive franchise application.¹¹ The cable franchise renewal process should remain in place to ensure that local governments, staff and residents have an opportunity to provide input.

111. The Commission May Not Preempt State or Local Customer Service Laws That Exceed Commission Standards.

The Florida Cities support the Cable Act's guidelines regarding adoption of local customer service laws.¹² The Cable Act has significant and meaningful consumer protection and privacy provisions. These are national standards with local enforcement, but include the ability of the local government to adopt and to enforce more stringent consumer protection laws. Many of the Florida Cities have adopted specific consumer protection provisions to address concerns that have arisen in their communities. The adoption and enforcement of such consumer protections are essential for the Florida Cities' residents. Local governments are the most appropriate regulatory entities to ensure that cable operators are providing quality customer services to its residents.

In 2004 and 2005, the Florida Cities experienced an unprecedented number of hurricanes. Many Floridians were without power for more than a week in the aftermath of Hurricanes

⁷ FNPRM at ¶ 22.

⁸ The City of Homestead and the City of Miramar sent draft cable franchise agreements to Comcast Corporation ("Comcast") in August 2006; however, to date, Comcast failed to submit comments; the Town of Pembroke Park commenced negotiations with Comcast in 2003, and while staff met with Comcast's representatives several times, Comcast has yet to finalize a cable franchise agreement with the Town.

⁹ *Supra* note 5.

¹⁰ NFPRN at ¶ 112.

¹¹ *Id.* at ¶ 72.

¹² Cable Act at §652.

Katrina, Rita and Wilma and without cable services for even longer. Additionally, Hurricanes Charley, Frances, Ivan and Jeanne caused substantial damage to Florida homes. Thousands of residents lost electricity and cable service for extended periods of time. Because there are also thunderstorms, windstorms, floods, tornadoes and other natural disasters in Florida, it is important that the Florida Cities be responsible for handling consumer complaints against service providers in the event of outages after major service interruptions, or other emergencies.

It is important that the Florida Cities maintain their ability to adopt appropriate preparation plans for hurricanes, that they provide emergency services to employees and residents, and that they have authority to facilitate recovery efforts for the safety and welfare of providers, employees and residents. Prior to hurricanes, the Florida Cities coordinate their hurricane preparation plans with incumbent cable operators. Such plans include having appropriate backup power at headends and in the field and complying with building codes so that facilities can withstand hurricanes and do not pose unreasonable hazards during a storm.¹³ During storms, incumbent cable operators notify the Florida Cities of damage, disruption of service, and the need for emergency medical, police and fire services to protect employees and residents. Cable providers often must have representatives stationed in emergency operations centers to convey necessary information as quickly as possible. Following the hurricanes, the Florida Cities are the entities responsible for removing debris. The Florida Cities coordinate such efforts with users of the rights-of-way. Employees of users of the rights-of-way are not allowed to attempt to restore service until debris is removed and it is safe to travel on roads and streets. In addition, following the hurricanes, the Florida Cities assist incumbent cable operators with efforts to restore service. They further handle hundreds if not thousands of calls from residents for assistance with service restoration.¹⁴ The Florida Cities, through their local consumer protection standards, are able to ensure that cable customers receive appropriate credits for when they did not have service.

The Florida Cities' consumer protection standards are essential for disaster preparation, emergency services, and restoration efforts. If the Commission removes or alters such authority, this could have the unintended consequence of impairing the ability of Florida Cities to provide assistance in times of hurricanes and other emergencies to their residents. The Commission does not have the capacity to act as a forum to hear complaints arising out of such events. Local government's front-line responsibility would be thwarted if the Commission decided to orchestrate preparation for and recover from weather disasters impacting the Florida Cities.

IV. Conclusion.

For purposes of the Commission's tentative conclusion with regard to the applicability of FNPRM, it would be inconsistent with the Cable Act if the Commission set forth limitations for cable franchise renewals that interfered with the discretion of the local government. Despite the

¹³ The Florida Cities are also able to use their access channels to provide necessary information to residents about storm preparations, shelters, and emergency operations. Additionally, appropriate emergency management agencies are able to provide emergency notices to residents over cable and other systems.

¹⁴ After Hurricane Wilma, the Miami-Dade County cable consumer office alone received over 1,000 calls from cable customers for assistance with restoring service. Residents in each of the Florida Cities called their respective city for such assistance.

telephone companies attempt to change the law to fit their economic needs, the Florida Cities oppose any action by the Commission that adversely impacts the welfare of their communities, and ultimately eliminates any oversight over cable providers and consumer protection currently afforded to subscribers residing within the Florida Cities.

Respectfully submitted,

**Bal Harbour Village, Florida
Town of Surfside, Florida
City of Homestead, Florida
City of Dania Beach, Florida
City of Miramar, Florida
Town of Pembroke Park, Florida
City of Weston, Florida**



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